

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MALIBU MEDIA, LLC,

Plaintiff,

-against-

ROBERT KAYE,

Defendant.

Case No. 2:19-cv-02154-RRM-SIL

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
AMENDED COMPLAINT**

Defendant Robert Kaye, by and through his undersigned attorneys, hereby answers Plaintiff Malibu Media, LLC's Amended Complaint-Action For Damages For Property Rights Infringement, dated April 6, 2020, as follows:

AS AND FOR AN ANSWER TO: INTRODUCTION

1. Paragraph 1 of the Complaint is a legal conclusion and therefore Defendant can neither admit nor deny the allegations stated in Paragraph 1 of the Complaint.
2. Defendant denies the allegations of Paragraph 2 of the Complaint.
3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint and therefore denies them.

AS AND FOR AN ANSWER TO: JURISDICTION & VENUE

4. Defendant denies the allegations of Paragraph 4 of the Complaint.
5. Defendant denies the allegations of Paragraph 5 of the Complaint.
6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Complaint and therefore denies them.
7. Defendant denies the allegations of Paragraph 7 of the Complaint.

AS AND FOR AN ANSWER TO: PARTIES

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint.

9. Defendant admits Paragraph 9 of the Complaint.

AS AND FOR AN ANSWER TO: FACTUAL BACKGROUND

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint.

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint.

17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant denies the allegations of Paragraph 19 of the Complaint.

20. Defendant denies the allegations of Paragraph 20 of the Complaint.

21. Defendant denies the allegations of Paragraph 21 of the Complaint.

22. Defendant denies the allegations of Paragraph 22 of the Complaint.

23. Defendant denies the allegations of Paragraph 23 of the Complaint.

24. Defendant denies the allegations of Paragraph 24 of the Complaint.

AS AND FOR AN ANSWER TO: MISCELLANEOUS

25. Defendant denies the allegations of Paragraph 25 of the Complaint.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint and therefore deny them.

AS AND FOR AN ANSWER TO: COUNT 1 DIRECT INFRINGEMENT

AGAINST DEFENDANT

27. Defendant repeats and reasserts each and every one of the responses contained in the preceding Paragraphs 1-26 hereof with the same force and effect as though fully set forth herein.

28. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint and therefore deny them.

29. Defendant denies the allegations in Paragraph 29 of the Complaint.

30. Defendant denies the allegations in Paragraph 30 of the Complaint.

31. Defendant denies the allegations in Paragraph 31 of the Complaint, including each and all of its sub-paragraphs (A)-(D).

32. Defendant denies the allegations in Paragraph 32 of the Complaint.

AS AND FOR AN ANSWER TO PLAINTIFF'S DEMAND FOR RLEIEF

Defendant denies that Plaintiff is entitled to any relief whatsoever it seeks in its prayer for relief such that Defendant prays that Plaintiff' Complaint be dismissed with prejudice, or alternatively that a judgment of no cause for action be entered in favor of Defendant and against Plaintiff, with costs and attorney fees to be awarded to Defendant as allowed by law.

AS AND FOR AN ANSWER TO PLAINTIFF'S DEMAND FOR A JURY TRIAL

Defendant hereby objects that Plaintiff is entitled to a trial by jury.

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Plaintiff has failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

2. Plaintiff's asserted copy right claims are not protectable.

THIRD AFFIRMATIVE DEFENSE

(Non-Infringement)

3. Defendant has not infringed any applicable copy right laws.

FOURTH AFFIRMATIVE DEFENSE

(Innocent Infringement)

4. The claims in the Complaint are barred, in whole or in part, because any infringement, if any, was innocent.

FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

5. To the extent Plaintiff has suffered any damages, which Defendant expressly deny, Plaintiff has failed to take any steps to mitigate its damages.

SIXTH AFFIRMATIVE DEFENSE
(Laches)

6. Plaintiff's claims are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

7. Plaintiff's claims are barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE
(Waiver)

8. Plaintiff's claims are barred by waiver.

TENTH AFFIRMATIVE DEFENSE
(Personal Jurisdiction)

9. This Court lacks personal jurisdiction over Defendant.

ADDITIONAL DEFENSES

10. Defendant reserve the right to supplement or amend this answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this action.

PRAYER FOR RELIEF

WHEREFORE, the Defendant respectfully requests that judgement be entered by this Court dismissing any claims in the Amended Complaint that are deemed by the Court to be lacking in merit, with prejudice and granting such further relief as may be just and proper.

Dated: June 19, 2020

/s/ Oleg A. Mestechkin

Oleg A. Mestechkin (OM4108)

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Attorneys for Defendant Robert Kaye

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2020, I served the foregoing document via electronic filing with the Clerk of the Court using the CM/ECF electronic filing system.

/s/ Nancy Lam

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